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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 DAVID VINCENT CARSON,
12 CDCR #J-19886,

13 Plaintiff,

14 v.

15 F. MARTINEZ, et al.

16 Defendants.
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Case No.: 16-CV-1736 JLS (BLM)

**ORDER: (1) OVERRULING
PLAINTIFF’S OBJECTIONS;
(2) ADOPTING REPORT AND
RECOMMENDATION; AND
(3) GRANTING IN PART AND
DENYING IN PART DEFENDANTS’
MOTION FOR SUMMARY
JUDGMENT**

(ECF Nos. 63, 83, 87)

20 Presently before the Court is Defendants D. Garcia, F. Martinez, and G. Casian’s
21 Motion for Summary Judgment (ECF No. 63). Magistrate Judge Barbara L. Major
22 submitted a Report and Recommendation (“R&R,” ECF No. 83) recommending
23 Defendants’ Motion be Granted in Part and Denied in Part. Plaintiff David Vincent Carson
24 submitted Objections to the R&R (“Objs.,” ECF No. 87), and Defendants submitted a
25 Reply to those Objections (ECF No. 88).

26 **BACKGROUND**

27 Judge Major’s R&R contains a complete and accurate recitation of the relevant
28 factual and procedural history underlying Plaintiff’s claims and Defendants’ Motion.

1 *See generally* R&R. This Order incorporates by reference the background as set forth
2 therein.

3 **LEGAL STANDARD**

4 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district
5 court's duties in connection with a magistrate judge's R&R. The district court must "make
6 a de novo determination of those portions of the report or specified proposed findings or
7 recommendations to which objection is made," and "may accept, reject, or modify, in
8 whole or in part, the findings or recommendations made by the magistrate judge." 28
9 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667, 673–76 (1980). In
10 the absence of a timely objection, however, the Court "need only satisfy itself that there is
11 no clear error on the face of the record in order to accept the recommendation." Fed. R.
12 Civ. P. 72 advisory committee's note (citing *Campbell v. U.S. Dist. Ct.*, 501 F.2d 196, 206
13 (9th Cir. 1974)).

14 **ANALYSIS**

15 Defendants' Motion for Summary Judgment argues that "(1) Defendant Garcia is
16 'entitled to summary judgment as to Plaintiff's failure-to-protect claim because she did
17 not witness or participate in the force incident[,] (2) Defendant Martinez is entitled to
18 summary judgment 'because Plaintiff's retaliation claim is barred by the favorable
19 determination doctrine[,] and (3) Defendant Casian is entitled to summary judgment
20 because 'Plaintiff's constant and progressive medical care' does not demonstrate that she
21 was deliberately indifferent to [Plaintiff's] medical needs." R&R at 2 (citing MSJ).

22 Magistrate Judge Major recommends the Court (1) deny Defendants' Motion as to
23 Plaintiff's Eighth Amendment failure-to-protect claim against Defendant Garcia, (2) grant
24 Defendants' Motion as to Plaintiff's First Amendment retaliation claim against Defendant
25 Martinez as it pertains to conduct underlying the Rules Violation Report ("RVR") prepared
26 by Defendant Martinez, but deny the Motion to the extent the claim is based upon conduct
27 unrelated to the RVR, and (3) grant Defendants' motion as to Plaintiff's Eighth
28 Amendment deliberate indifference claim against Defendant Casian. *See generally* R&R.

1 The Parties have not objected to Magistrate Judge Major's R&R as it pertains to the
2 claims against Defendant Martinez and Defendant Garcia. The Court finds the R&R is
3 well reasoned and contains no clear error and therefore **ADOPTS** the R&R in its entirety
4 as it pertains to these claims.

5 Plaintiff has objected to the R&R as it pertains to the claim against Defendant
6 Casian. First, Plaintiff objects to Magistrate Judge Major's conclusion that "[e]ven
7 viewing all of the evidence in the light most favorable to Plaintiff, Plaintiff has not
8 presented evidence creating a triable issue of fact as to whether Defendant Casian was
9 deliberately indifferent to Plaintiff's serious medical needs." R&R at 26. Plaintiff argues
10 that Magistrate Judge Major misconstrued the evidence it relied on in reaching her
11 conclusion and that the evidence and relevant case law supports his claim that the delay in
12 receiving the medical care he requested creates a triable issue of fact. Objs. at 1–11.

13 Second, Plaintiff objects to Magistrate Judge Major's conclusion that "there is no
14 evidence to support Plaintiff's claim that Defendant Casian terminated all of Plaintiff's
15 accommodation chronos." R&R at 30. Plaintiff argues that, contrary to Magistrate Judge
16 Major's findings, the medical records show that Defendant Casian "arbitrarily and
17 capriciously, based on personal animosity, canceled [the medical chronos] before they were
18 set for 'annual review.'" Objs. at 12.

19 After a *de novo* review of the R&R's reasoning, the record evidence, and applicable
20 legal authorities, the Court concludes it must agree with Magistrate Judge Major's
21 recommendations. With regard to Plaintiff's claim that Defendant Casian delayed medical
22 treatment, the Court agrees that, at most, the evidence shows a difference of opinion
23 between Plaintiff and Defendant Casian regarding the appropriate medical treatment. *See*
24 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989) ("A difference of opinion does not
25 amount to a deliberate indifference to [plaintiff's] serious medical needs.").

26 As for Plaintiff's claim that Defendant Casian terminated Plaintiff's chronos, the
27 Court agrees that there is no evidence to support Plaintiff's claim. *See* R&R at 30. To the
28 extent Plaintiff argues that Defendant Casian violated his Eighth Amendment rights by

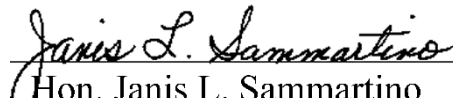
1 limiting the duration of the lower bunk chronos, the Court finds this argument equally
2 without merit. “[A]t most, it could be considered a difference of opinion between Plaintiff
3 and Defendant Casian as to the appropriate length of the limitation.” *Id.* at 31 (citing
4 *Singleton v. Lopez*, 577 F. App’x 733, 735 (9th Cir. 2014)). The Court therefore **ADOPTS**
5 the R&R as it pertains to these claims.

6 **CONCLUSION**

7 After reading the R&R and conducting a *de novo* review of those portions to which
8 Plaintiff objected, the Court must agree with Magistrate Judge Major’s sound reasoning.
9 Accordingly, the Court (1) **OVERRULES** Plaintiff’s Objections (ECF No. 87),
10 (2) **ADOPTS** the R&R in its entirety, and (3) **GRANTS IN PART AND DENIES IN**
11 **PART** Defendants’ Motion for Summary Judgment (ECF No. 63). Specifically, the Court
12 (1) **DENIES** Defendants’ Motion as to Plaintiff’s failure-to-protect claim against
13 Defendant Garcia, (2) **GRANTS** Defendants’ Motion as to Plaintiff’s First Amendment
14 retaliation claim against Defendant Martinez to the extent it is based upon to conduct
15 underlying the RVR and **DENIES** the Motion as to Plaintiff’s retaliation claim against
16 Defendant Martinez to the extent it is based upon conduct unrelated to the RVR, and (3)
17 **GRANTS** Defendants’ Motion as to Plaintiff’s deliberate indifference claim against
18 Defendant Casian.

19 **IT IS SO ORDERED.**

20 Dated: September 3, 2019

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22 Hon. Janis L. Sammartino
23 United States District Judge
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